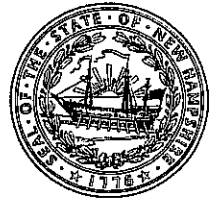




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

January 7, 2010

The Honorable Mary Cooney, Chair  
House Municipal & County Government Committee  
Legislative Office Building, Room 301  
Concord, New Hampshire 03301

**RE: HB 1155, relative to water district contracts**

Dear Chairperson Cooney:

Thank you for the opportunity to comment on HB 1155, which seeks to repeal RSA 52:25. This statute currently authorizes Village Districts to contract with the Department of Environmental Services (DES) for the construction, operation, and maintenance of dams owned by Village Districts.

Under this statute, two Village Districts currently contract with DES for the operation and maintenance of their dams. DES has also recently performed major reconstruction on these two dams under separate contracts with these Village Districts. While DES appreciates the effective working relationships we have had with these two Village Districts, DES is concerned that if other Village Districts choose to contract with DES under this statute, it would reduce the ability of DES to properly operate, maintain and repair state-owned dams. DES is also concerned with the liability provisions that exist under RSA 52:25, which are inconsistent with other statutes regarding the liability of the state. For these reasons, DES supports a repeal of RSA 52:25.

In 1975 the Legislature enacted Chapter 13 to amend RSA 52 to authorize the formation of Village Districts for the purpose of impounding water. At that time, bills were being introduced for the state to take ownership of dams in need of repair, with the state assuming the cost of repairs as well as the responsibility for future operation and maintenance. As an alternative to state ownership, the Legislature authorized lake shore owners to form Village Districts, which could then raise money by taxation and appropriate the funds needed to operate, maintain and repair the dams. As part of that law, the Legislature authorized Village Districts to contract with DES for the operation, maintenance and repair of the dams, with the Village Districts paying DES for all expenses incurred in performing this work. Since enactment of that law, thirteen Village Districts have been formed for the purpose of impounding water, but currently only two of them have contracted with DES for the operation, maintenance and reconstruction of their dams.

The State of New Hampshire, through its agencies, owns a total of 274 dams, most of which are well over 100 years old. Given the number of dams the state owns and the normal

design life of these structures, the state must perform major repairs or reconstruction on an average of five dams per year. With the existing capacity of DES's Dam Maintenance Crew, the backlog of work is up to 35 dams with known deficiencies in need of repair. If the other eleven Village Districts or new Village Districts choose to contract with DES, the work for these Village Districts would add significantly to the work of DES's Dam Maintenance Crew, and, without additional staff and equipment, would seriously delay much needed repair on these state-owned dams.

DES is also concerned with the liability provision included in RSA 52:25. Under this statute, DES must assume all obligations and liabilities resulting from the construction, operation and maintenance work it performs under contract with Village Districts. This liability provision is inconsistent with other statutes regarding the state's liability, including RSA 99-D, RSA 541-B:14 and RSA 541-B:19. Under these statutes DES can only be liable for the damages resulting from the acts or omissions of its agents to the extent permitted by law. If the Legislature chooses not to repeal RSA 52:25, it should amend RSA 52:25, to be consistent with the background law governing the state's liability, by removing the following sentence: *"In return for such payments, the department of environmental services shall assume all obligations and liabilities resulting from such construction, operation, and maintenance."* In addition, the next sentence in the statute should be modified to read: *"If the village district terminates its existence or if the contract is terminated, ~~such~~ any obligations and liabilities outstanding at the time of such termination shall be outstanding obligations and liabilities of the district and, if the district is terminated, shall be treated in the same manner as under RSA 52:21."*

Thank you for this opportunity to comment on this bill. Please call either me at 271-2958 or Jim Gallagher at 271-1961, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack  
Commissioner

cc: Rep. David Bickford  
Rep. Chris Christensen  
Rep. Peter Bolster